

**LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECTS**  
**FACT SHEET**  
**July 2009**

**INTRODUCTION:**

***Background***

Under the authority of the California Water Code (CWC), the State Water Resources Control Board (State Board) and Regional Water Quality Control Boards (Regional Boards) may issue administrative civil liability complaints (ACLCLs) to dischargers in response to violations of waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Boards. Assessments collected through the ACLCL process are required by the CWC to be paid to the State Board Cleanup and Abatement Account (CAA) or other account as specified in law. The State Board administers the CAA, and funds are used to address important water quality cleanup and abatement activities throughout the state.

As an alternative to depositing ACLCL assessments in the CAA, the State Board's Water Quality Enforcement Policy recognizes that ACLCL assessments may be used for important and valuable water quality improvement projects within the Region in which the assessment was made. These are known as Supplemental Environmental Projects (SEPs). SEPs are projects that (1) enhance the beneficial uses of the waters of the state, (2) provide a benefit to the public at large, and (3) are not otherwise required or would be greatly accelerated by the funding provided by the ACLCL assessment. Examples of SEPs include pollution prevention projects, environmental restoration programs, environmental auditing, public awareness and education activities, watershed assessments, watershed management facilitation services, and non-point source program implementation. On February 28, 2002, in order to expedite and simplify the SEP selection process, the Regional Board adopted Resolution No. 02-007 allowing the Regional Board staff to maintain a SEP List containing SEPs solicited by the Regional Board and approved on a semi-annual basis by the Regional Board. This SEP List is posted on the Regional Board website and edited when necessary for up-to-date SEP project information.

***New SEP Policy***

The State Board supports the inclusion of SEPs in ACLCL actions, even when SEPs are not expressly authorized, so long as these projects meet the criteria specified below to ensure that the selected projects have environmental value, further the enforcement goals of the State Board and Regional Boards, and are subject to appropriate input and oversight by the Water Boards. In the interest of these goals, the SEP policy has been extensively revised and the new policy was adopted by the State Board on February 3, 2009. While SEPs are valuable resources for improving water quality in the Region impacted by the discharger, the new policy recognizes the need for increased oversight, accountability and limitations. This fact sheet is intended to notify Dischargers of the new policy so they are able to determine if they qualify for a SEP and if that option is in their best interest.

## SEP POLICY FACTS:

### *Summary of Important Policy Changes (See rest of sheet for more detailed descriptions)*

- Unless mandated by statute, the discharger cannot fund a SEP that costs more than 50 percent of the total assessment against the discharger.
- Each SEP must be tailored as a discrete project or sub-project commensurate with the funding proposed by the discharger. Thus, a discharger may not simply pay its penalty toward a specific project; it must pay for and be responsible for one complete project or sub-project. Liability for the complete amount placed towards a SEP remains until successful completion of the SEP and submittal of the final report to the Regional Board.
- The discharger must develop a detailed workplan for the project.
- The SEP and workplan must be agreed upon during negotiations and included an Order or Complaint issued by the Regional Board.
- In addition to funding the SEP, the discharger is also responsible for the costs of project oversight by the Regional Board and a third party.

### *General Criteria for a SEP*

- An individual SEP with a value less than \$50,000 will generally not be considered.
  - SEPs already on the Regional Board's approved SEP list may, with Regional Board approval, be granted for less than \$50,000.
- No settlement shall be approved by the Regional Board that funds a SEP in an amount greater than 50 percent of the total adjusted monetary assessment (total amount assessed, exclusive of a Regional Board's investigative and enforcement costs) against the discharger, absent compelling justification.
  - **Therefore**, for a discharger to be eligible for a SEP, the penalty assessed against it must be \$100,000 or more, otherwise it will violate either the \$50,000 or more requirement, or the 50 percent or less requirement.
- There must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remedies or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
- A SEP cannot be an action, process, or product that is already required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s).
- A SEP must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Non-exhaustive examples include:
  - Monitoring programs
  - Studies or investigations
  - Water or soil treatment
  - Habitat restoration or enhancement
  - Pollution prevention or reduction
  - Wetland, stream, or other waterbody protection, restoration or creation
  - Conservation easements
  - Stream augmentation

- Reclamation
- Watershed assessment
- Watershed management facilitation services
- Compliance training, compliance education, and the development of educational materials
- Enforcement projects, such as training for environmental compliance and enforcement personnel
- Non-point source program implementation
- A SEP may not fiscally benefit a Regional or State Board's functions, members, staff, or family of members and staff. Indirect benefits provided to these people may only be those enjoyed by the public generally. Also, the SEP may not *appear* to benefit any of these people suggesting a conflict of interest.
- If the discharger elects to select a SEP from the Regional Board approved SEP List, then in addition to the above criteria the discharger must tailor the SEP so that the discharger fully funds the entire SEP or fully funds a phase of the project.

#### ***Additional Considerations and Criteria***

- The Regional Board will also consider these criteria when evaluating the SEP:
  - Does the SEP, when appropriate, include documented support by other public agencies, public groups, and affected persons?
  - Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?
  - Does the SEP proposal, considering the nature or the stage of development of the project, include documentation that the project complies with the CEQA?
  - Does the SEP proposal address whether it can be the basis for additional funding from other sources?
  - Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to complete the SEP? Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
  - Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?

#### ***Revised SEP Adoption Process***

- When resolving the Complaint, the discharger can choose either:
  - An individual SEP proposed by the discharger, or
  - A SEP from the Regional Board pre-approved list (currently being phased out)
  - A possible SEP from a list of interested organizations.
    - These three types of SEPs can be performed by either the discharger or a third-party
    - If it is to be performed by a third-party, this party must be independent from both the discharger and the Regional Board so as to avoid actual or perceived conflicts of interest.
- If the discharger proposes an individual SEP then they must submit a proposal that meets the general criteria stated above.

- If the discharger proposes to fund a SEP off the Regional Board approved SEP List then the proposal must be tailored to fully fund the SEP or a phase of the SEP.
- Upon selection of a SEP the discharger must submit a workplan for approval by the Regional Board Executive Officer. The workplan must include:
  - A project title
  - The organization proposing the project [project manager's name, email address, and phone number; type of organization (public, private, non-profit, etc.)]
  - The name of the independent management company who would report solely to the Regional Board, to oversee the implementation of the SEP, including all contact information (If applicable).
  - The third party completing the project including all contact information (If applicable).
  - The names and statement of qualifications and experience for key project team members.
  - The name and location of the project, including watershed (creek, river, bay) where it is located.
    - Ventura Coastal, Ventura River, Santa Clara River, Santa Monica Bay, Los Angeles Country Coastal, Los Angeles River, or multiple watersheds.
  - A description of the project and how it fits into one or more of the following SEP categories:
    - Pollution prevention
    - Environmental restoration
    - Environmental auditing
    - Compliance education/development of education materials
    - Watershed assessment (e.g., citizen monitoring, coordination, and facilitation)
    - Watershed management facilitation services
    - Non-point source program implementation
  - A description of how the project benefits water quality and/or quantity.
  - A description of how the project benefits the public.
  - Documented support by one or more of the following:
    - Other agencies
    - Public groups
    - Impacted persons
  - A monitoring plan or Quality Assurance Project Plan (QAPP) if applicable – required for all projects and tasks involving use of existing environmental data and those involved with the collection of new information e.g. the sampling and analysis project.
    - Guidance for QAPP <http://www.epa.gov/quality/qs-docs/g5-final.pdf>
  - A detailed description of the scope of work, work products and project milestones.
  - Include or reference a scope of work, including a budget.
  - A schedule for periodic monitoring (quarterly at a minimum) on the performance of the SEP to monitor the timely and successful completion of the SEP.

- Reports should include a list of all activities on the SEP since its adoption, all SEP activities during the quarter, an accounting of funds expended, and the proposed work for the following quarter.
  - Copies of the reports must be provided to the Regional Board and the Division of Financial Assistance of the State Board.
- A time schedule for implementation with single or multiple milestones and which identifies the amount of liability that will be suspended or excused upon the timely and successful completion of each milestone.
  - Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
- Contain or reference performance standards and identify measures or indicators or performance in the scope of work.
- Specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators.
- The approved workplan will be included in a draft Order subject to public notice and comment.
- Subsequent to adoption of the Order by the Regional Board:
  - The discharger must cover the costs of the Regional Board's oversight, or the Regional Board may allow the discharger to pay for an independent management company to report to the Regional Board and provide oversight. This is a mandatory function and the costs cannot be considered part of the SEP.
  - Third-parties must submit proper verification and acknowledgment that they will abide by the SEP rules and spend the money in accordance with the terms of the order and that they must agree to an audit of their expenditures if requested by the Regional Board.
  - The discharger or third-party must provide the Regional Board and the Division of Financial Assistance of the State Board with a final completion report under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcomes or performance standards were met.
  - The discharger must provide the Regional Board with a final, certified, post-project accounting of expenditures unless the Regional Board determines the audit to be unduly onerous and the Regional Board has other means to verify expenditures. The accounting must be funded by the discharger and performed by an independent third-party acceptable to the Regional Board.
  - It is permissible for a contract between a discharger and a third-party to require pre-approval of invoices or confirmation of completed work by a Regional Board before the funds are disbursed to the performing party.
- The Regional Board will not control the funds set aside for performance of a SEP unless placed in an authorized account.
- The Regional Board cannot directly manage or administer the SEP.
- The discharger's liability will be considered fully discharged only upon successful completion of the SEP and submittal of a final report approved by the Regional Board Executive Officer.